

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

GREENBERG SMOKED TURKEYS, INC.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 6:10-CV-621
v.	§	
	§	
GOODE-COOK, INC.,	§	
	§	JURY DEMANDED
Defendant.	§	

**COMPLAINT WITH REQUEST FOR PERMANENT  
INJUNCTIVE RELIEF AND DAMAGES AND JURY DEMAND**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff, Greenberg Smoked Turkeys, Inc., for its complaint against Goode-Cook, Inc.,  
would respectfully show the Court as follows:

INTRODUCTION

1. Plaintiff Greenberg Smoked Turkeys, Inc. ("Greenberg") is a Texas corporation with a principal office at 221 McMurrey Drive, Tyler, Texas 75702 and is the author of certain works of original authorship contained within its website, and which it is the copyright owner.
2. Defendant Goode-Cook, Inc. ("Goode") is a Texas corporation with a principal office at 2422 Bartlett Street, Suite 1, Houston, Texas 77098, and may be served by serving its registered agent, Levi M. Goode, at the same address, or wherever he may be found.

JURISDICTION AND VENUE

3. This is an action arising under the Copyright Laws of the United States, 17 U.S.C. §§101, et seq., with subject matter jurisdiction based on 28 U.S.C. §§ 1331 and 1338(a).

4. The court has personal jurisdiction over Goode in that, on information and belief, infringing goods have been sold in this district, and in any event, Goode has sufficient contacts with the State of Texas and this Judicial District and Division to subject it to the specific and general personal jurisdiction. The contacts with the State of Texas and this Judicial District and Division include establishing and maintaining an internet website with on-line ordering, said website containing the infringing instructions accessible to consumers in this Judicial District.

5. Venue is proper in the Tyler Division of the Eastern District of Texas under 28 U.S.C. §1400(a) with §1391(c).

#### COPYRIGHT INFRINGEMENT

6. In approximately 1987, Greenberg created and published an insert to include with their smoked turkey packages that gave instructions for the handling of their turkeys. In approximately 2003, Greenberg published a website on the internet that included a version of these instructions that remains to this day. The instructions are:

Our turkeys arrive at your door ready to eat. Refrigerate immediately. The turkey will keep in the refrigerator for 6-8 days. If you do not plan to use it in that length of time, it should be frozen.

We recommend that our turkeys are eaten chilled or at room temperature—just slice and enjoy!

If heating is required, follow these instructions: place turkey in a Reynolds® Oven Bag, which can be bought at your local grocer. Do not add flour to the bag. Cut 6 to 7 small slits in the top of the bag. Heat at 300 degrees for 6 minutes per pound.

These instructions accompany a product which has been a successful product for Greenberg for many years. A screen shot from Greenberg's website incorporating the instructions is attached hereto as Exhibit "A".

7. As the author of the instructions, Greenberg has at all times and does now own the copyrights to the instructions.

8. The instructions contain copyrightable subject matter under the laws of the United States, and Greenberg owns all rights in the work and copyright therein.

9. Greenberg has complied with the laws of the United States as they relate to copyright, 17 U.S.C. §§101, et seq., and has secured the rights and privileges in and to the copyright of the instructions.

10. All publication, distribution and sale of the copyrighted works and products associated therewith by or under the authorization of Greenberg have been in conformity with the Copyright Laws of the United States.

11. Goode began selling turkeys through its website sometime in the past. The website contains instructions for consumers to follow once they have received the product. A screen shot of their website including their instructions, which are unauthorized copies of Greenberg's copyright, are attached hereto as Exhibit "B". Each internet web page transmitted, a quantity of which is unknown, incorporating the instructions is a separate infringement.

12. Goode, by unlawfully advertising, distributing and selling turkeys with instructions in the United States copies Greenberg's copyright without authorization from Greenberg, has infringed Greenberg's copyrights.

13. On information and belief, the acts of infringement of Goode were committed willfully and with actual or constructive knowledge of Greenberg's copyrights in these instructions.

#### PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays for judgment as follows:

- a. That Goode, its agents, servants, employees, subsidiaries and all those in privity, concert or participation with any of them, be enjoined perpetually:
- (1) from copying, duplicating, purchasing, making, using, selling, trading, renting, exchanging, lending, distributing, transporting, or dealing in any other way with any product, in violation of Greenberg's copyright in their instructions for dealing with their turkeys.
  - (2) from offering to do any of the acts enjoined in subparagraph (1) above;
  - (3) from attempting, causing or assisting any of the above described acts to occur.
- b. That Goode be required to account for and pay over to Greenberg all profits which it has derived from the infringement of Greenberg's copyright, all damages Greenberg has suffered within the provisions of the Copyright Laws, or in the alternative, at Greenberg's election, that it be assessed statutory damages in an amount of One Hundred Fifty Thousand Dollars (\$150,000.00) per infringed work;
- c. That Goode be ordered to deliver up for destruction all products, labels, signs, prints, packages, dies, wrappers, receptacles and advertisements in its possession or under its control, including or referring to any of Greenberg's copyright in the turkey instructions works;
- d. That Goode be required to pay Greenberg her costs incurred herein, as well as reasonable attorneys' fees, as provided by the Copyright Laws;
- e. That Goode be required to pay Greenberg pre-judgment interest on the amount awarded and post-judgment interest until paid, all at the lawful rate; and
- f. That Greenberg have such other and further relief as to this Court seems just and proper.

JURY DEMAND: Plaintiff demands a trial by jury on all issues triable to a jury.

DATED: November 23, 2010

Respectfully submitted,

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